III. Remarks

A. Amendments to the Claims

Claim 1 has been amended to incorporate the additional feature of the invention set forth in claim 18, namely that the detergent or cleaner is a three-layer tablet, comprising a defined viscoelastic phase in the form of a layer between two tableted phases in the form of layers. Claim 18 has been amended to provide that at least one of the tablet phases further comprises two layers. Support for the further amendment to claim 18 is provided in the specification at page 55, lines 13– 29.

B. Joint Inventors

In Paragraph 5 of the Action, the Examiner notes that the application currently names joint inventors, and that in considering patentability of the claims under 35 U.S.C. § 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made, absent any evidence to the contrary. The Examiner also advises Applicants of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made, in order for the Examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Applicants confirm that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made.

C. Rejection under 35 U.S.C. § 103

Claims 1–25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 6,548,473 to Thoen et al.

1. Examiner's Reasons for the Rejection

The Examiner's reasons for the rejection are as follows:

> Jacques Kamiel Thoen et al. disclose a multi-layer detergent tablet having both a compressed and non-compressed portion comprising, in the non-compressed portion of said multi-layered tablet, at least 0.01% of a surfactant (col. 14,lines 54–61) and in particular anionic surfactants such as linear alkyl benzene sulfonate (col. 21, lines 32–42). Jacques Kamiel Thoen et al. further disclose the inclusion of builders in an amount from 10–80% by weight (col. 27, lines 41–50) and the at least one non-compressed portion of the detergent tablet is equal to or less than the compressed mold portion of the tablet (col. 51, lines

11–25).

> Jacques Kamiel Thoen et al. do not specifically teach that said phase is a viscoelastic phase having storage modulus of between 40,000 and 800,000 Pa and a phase shift in the range of 0 to 30 degrees Celsius.
>
> It would have been obvious to one of ordinary skill in the art to expect the compositions of Jacques Kamiel Thoen et al. to comprise a storage modulus or phase shift as claimed in the non-compressed layer because Jacques Kamiel Thoen et al. teaches the use of alkyl benzene sulfonates as surfactants that may be used in the non-compressed phase of the tablet composition and the skilled artisan would expect similar properties, in the absence [of] a showing to the contrary. Furthermore, the court held "it is not necessary in order to establish a *prima facie* case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant," and concluded that here a *prima facie* case was established because "[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties." *In re Dillon*, 919 F.2d 693, 16 USPQ2d 1901 (Fed. Cir. 1990), cert. denied.

(Examiner's Action, page 3, line 7 to page 4, line 7).

2. Comparison of Applicants' Claimed Subject Matter and the Thoen et al. patent

As noted above, claim 1 has been amended to define a detergent or cleaner three-layer tablet comprising a defined viscoelastic phase in the form of a layer placed between two tableted phases in the form of layers. The remaining claims 2–25 are dependent upon claim 1, or upon a claim which is ultimately dependent upon claim 1. Accordingly, claims 2–25 also comprise the subject matter set forth in claim 1.

Thoen et al. is directed to a detergent tablet having a compressed solid body portion and a non-compressed, non-encapsulating portion. Thoen et al. do not disclose, exemplify or even suggest to one of ordinary skill in the art Applicants' claimed detergent or cleaner three-layer tablet comprising a defined viscoelastic phase in the form of a layer placed between two tableted layers. Indeed, in the Examiner's reasons for rejection of claims 1–25 as unpatentable over Thoen et al., the Examiner does not cite any passage in Thoen et al. containing such a disclosure.

3. There Is No *Prima Facie* Case of Obviousness Supporting the Rejection of Claims 1–25 as Unpatentable Over Thoen et al.

Under Section 2142 of the Manual of Patent Examining Procedure:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As set forth above, Thoen et al. do not teach or suggest to one of ordinary skill in the art the limitation set forth in claim 1 that the detergent or cleaner three-layer tablet comprises a viscoelastic phase in the form of a layer placed between two tableted layers. As claims 2–25 are dependent directly or indirectly upon claim 1, and therefore include the subject matter of claim 1, Thoen et al. also do not teach or suggest to one skilled in the art all of the claim limitations in claims 2–25. Therefore, no *prima facie* case can be made that claims 1–25 are obvious over Thoen et al.

Accordingly, for the reasons set forth above, a rejection of claims 1–25 under 35 U.S.C. § 103(a) as unpatentable over Thoen et al. is untenable and should be withdrawn.

IV. Conclusion

It is believed that the above Amendment and Remarks constitute a complete response under 37 CFR § 1.111 and that all bases of rejection in the Examiner's Action have been adequately rebutted or overcome. A Notice of Allowance in the next Office Action is, therefore, respectfully requested. The Examiner is requested to telephone the undersigned attorney if any matter that can be expected to be resolved in a telephone interview is believed to impede the allowance of pending claims 1–25 of United States Patent Application Serial No. 10/694,549.

Respectfully submitted,

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